

10 *Official Opinions of the Compliance Board 51 (2016)*

◆ **1(A)(3) PUBLIC BODY – DEFINITION NOT MET BY TASK FORCE
APPOINTED BY SCHOOL SYSTEM’S CHIEF EXECUTIVE
OFFICER**

*Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at https://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf

Re: Prince George’s County Public Schools Student Safety Task Force
Colin Byrd, *Complainant*

May 31, 2016

Complainant Colin Byrd alleges that the Prince George’s County Public Schools Student Safety Task Force violated the Open Meetings Act on March 1, 2016, by holding a meeting that was not open to the public. Counsel for the Prince George’s County Public Schools, responding on behalf of the Task Force, states that the Task Force is not subject to the Act. The Task Force does not dispute the allegation that it met that day without inviting the public.

The only question here is whether the Act applies to the Task Force. As explained in greater length in 9 *OMCB Opinions* 314 (2015) and as relevant here, the Act applies to entities that fall within its definition of a “public body.” See § § 3-101(h) (defining “public body”); 3-301 (requiring “public bod[ies]” to meet in open session).¹ The definition sets three tests.²

Under the first test, a multimember entity is a “public body” if it was created by a formal action such as a law, resolutions, ordinances, bylaw, or rule. §§ 3-101(h)(1). The response states that the Task Force was formed and appointed by the chief executive officer (“CEO”) of the Prince George’s County Public Schools. The facts provided to us do not establish that the Task Force meets this test.

The complaint focuses on the second test. Under that test, as relevant here, a multimember entity is a “public body” if it was appointed by “an

¹ Except as noted, statutory citations are to the General Provisions Article of the Maryland Annotated Code (2014, with 2015 supp.)

² For an explanation of the three “public body” tests, see Open Meetings Act Manual 3-6 (2015).

official who is subject to the policy direction of the Governor or chief executive authority of [a] political subdivision,” so long as at least two members are not employees of the State or political subdivision in question. § 3-101(h)(2)(i). At least two members of the Task Force are members of the public, so that part of the test is met. That leaves the question of whether the “policy direction” part of the test is met. Complainant argues that the CEO is subject to the policy direction of the county executive, who selects the CEO from a list provided by a committee appointed by State officials. Educ. § 4-201.1(c). Complainant cites the county executive’s role in the appointment of the CEO, the county’s role in school budgetary matters, and the county executive’s statements on school safety matters.

The answer lies in the Education Article of the Maryland Annotated Code, which makes clear that county boards of education, although named after the county in which they are located, Md. Code Ann., Educ. § 3-104, are not departments of the county government. Instead, each “is a body politic and corporate” created by State law, and policy direction comes from the State Department of Education. *Id.*, §§ 3-103, 2-205(b).³ The county executive’s role in appointing the CEO thus does not include “policy direction” over that officer once the appointment is made. We conclude that the chief executive officer is not subject to the county executive’s “policy direction” and that the Task Force does not meet the second test.

Under the third test, in relevant part, a multimember entity is a “public body” if it was appointed by an official who is “subject to the policy direction” of a gubernatorially-appointed public body that is “in the Executive Branch of the State government.” The Prince George’s County Board of Education is predominantly elected, Md. Code Ann., Educ. § 3-

³ Section 2-205(b) of the Education Article provides:

The State Board shall:

- (1) Determine the elementary and secondary educational policies of this State; and
- (2) Cause to be carried out those provisions of this article that are within its jurisdiction.

See also Resetar v. State Bd. of Ed., 284 Md. 537, 556 (1979)(explaining that “the totality of the various statutory provisions concerning the State Board [of Education] ‘quite plainly . . . invests the State Board with the last word on any matter concerning educational policy or the administration of the system of public education.’”) (quoting *Wilson v. Board of Education*, 234 Md. 561, 565 (1964); *Frederick Classical Charter Sch., Inc. v. Frederick Cty. Bd. of Educ.*, 227 Md. App. 439 (2016)(same); 92 Md. Op. Att’y Gen. 137 (2007) (“It is well established under Maryland law that county boards of education are State agencies.”)).

1002, and, in any event, it is unclear at best whether a county school board falls within the “Executive Branch” of the State’s government. *See Chesapeake Charter, Inc. v. Anne Arundel Cty. Bd. of Educ.*, 358 Md. 129, 139 (2000) (explaining the status of county school boards for procurement purposes).

Our authority extends only to complaints that a public body that is subject to the Act has violated it. § 3-204(a). We dismiss this complaint because the Task Force is not subject to the Act.

Open Meetings Compliance Board

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